IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8861 of 2001

With

SPECIAL CIVIL APPLICATION No. 8863 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

HAZARAT SAHIFFULA REFAI DARGAHPVT.TRUST

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 8861 of 2001
MR YN OZA for MR YM THAKKAR for Petitioners No. 1-5
MR PRASHANT G DESAI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

2. Special Civil Application No. 8863 of 2001
MR YN OZA for MR YM THAKKAR for Petitioners No. 1-5
MR PRASHANT G DESAI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/12/2001

ORAL JUDGEMENT

1. In both these matters, on 7th November, 2001, Rule was issued with notice as to interim relief, making it returnable on 26th November, 2001. On 26th November, 2001, matters were adjourned to 27th November, 2001 and again on 27th November, 2001, the matters came to be adjourned to 5th December, 2001. Thereafter, both these matters are listed before the Court today.

2. The controversy raised in both these petitions is as to whether the impugned order dated 25th July, 2001 refusing the development permission is arbitrary, illegal, null and void and therefore, respondent-Corporation be directed to grant development permission to the petitioners, as prayed for vide applications dated 18th January, 2001 and 16th April, 2001. At the time of hearing of these petitions, Mr.Y.N.Oza, learned Counsel appearing for the petitioners, submitted that he be permitted to restrict his relief to the extent that, "the development permission to the petitioners be not refused on the ground stated in clause 20 of the said order". Clause 20 of the order states that, "As Surat Municipal Corporation has lodged its objections against the modifications made by the Government at the time of sanctioning of T.P.-14 (Rander - Adajan) Preliminary Scheme, development permission as sought for cannot be granted."

3. The learned Advocates appearing for the parties agreed that both the matters have identical facts and the question involved in both these petitions is the same. The only distinguishing feature in these two petitions is that the property involved in Special Civil Application No. 8863 of 2001 was under reservation, even in the `Draft Development Plan', while the other was not, except this, both the matters have identical facts.

4. Mr.Y.N.Oza, learned Counsel appearing for the petitioners, strenuously urged that in view of the provisions of Sub.Section 3 of Section 65, once the preliminary scheme is accorded sanction, it is deemed to have been incorporated in the Act i.e Gujarat Town Planning and Urban Development Act itself and, and the respondent-Corporation cannot refuse development permission on the ground stated in clause 20 of the impugned order. For ready perusal, Section 65 in extenso is reproduced hereinbelow:

Section 65. Power of Government to sanction or refuse to sanction the scheme and effect of sanction. --

(1) On receipt of the preliminary scheme or, as the case may be, the final scheme, the State Government may --

(a) in the case of a preliminary scheme, within a period of two months from the date of its receipt, and

(b) in the case of a final scheme, within a period of three months from the date of its receipt,

by notification, sanction the preliminary scheme or the final scheme or refuse to give sanction, provided that in sanctioning any such scheme, the State Government may make such modifications as may, in its opinion, be necessary for the purpose of correcting an error, irregularity or informality.

(2) Where the State Government sanctions the preliminary scheme or the final scheme, it shall state in the notification -

(a) the place at which the scheme shall be kept open for inspection by the public, and

(b) a date (which shall not be earlier than one month after the date of the publication of the notification) in which all the liabilities created by the scheme shall come into force :

Provided that the State government may from time to time extend such date, by notification, by such period, not exceeding three months at a time, as it thinks fit.

(3) On and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act."

5. The learned counsel submitted that validity of this provision was challenged and the same was upheld by this Court. Therefore, this case stands on sound footing

and the Surat Municipal Corporation be directed by issuing a writ of mandamus to delete Clause 20 from the impugned order. He emphatically submitted that the Corporation may reject or refuse the permission for development on any other ground, available to the Corporation under the relevant provisions of law, but, cannot refuse permission for development on the ground stated in Clause 20 in view of specific provision of Sub-Section 3 of Section 65 of the Act. He submitted that once a preliminary scheme is sanctioned and the date for the purpose of Clause (b) of Sub-Section 2 of Section 65 of the Act is fixed under the notification dated 17/11/2001, which is 18/12/2001, it is not at all open to Surat Municipal Corporation to refuse development permission on the ground set out in Clause 20 of the impugned order.

5.1 The learned Counsel for the petitioners submitted that under Section 67 of the Act, the effect of preliminary scheme is that all lands required by the appropriate authority shall, unless it is otherwise determined in the scheme, vest absolutely i.e. free from all encumbrances, in the appropriate authority. He submitted that the consequent effect of Section 67 of the Act is that it is not open to Surat Municipal Corporation to refuse the development permission on the ground mentioned in the said clause.

5.2 The learned Counsel for the petitioners, with all vehemence submitted that Surat Municipal Corporation is under an obligation under Section 69 of the Act to enforce the scheme being the appropriate authority under the Act. It amounts to unbecoming of an "appropriate authority" or "an organ of the State" by refusing the development permission to the petitioners on such flimsy ground.

5.3 The learned Counsel for the petitioners submitted that in the present case the State Government by its letter dated 23rd August, 2001, a copy of which is produced at Annexure-H, page 34 of this petition, conveyed to the Municipal Commissioner of Surat Municipal Corporation that "In response to the letter of Surat Municipal Corporation, under reference about the aforesaid subject, it is to be intimated that, the Scheme sanctioned by the Government, under reference of an M.L.A., the implementation be commenced and the same should immediately be conveyed to this department."

5.4 On a query from the Court, the learned Counsel for the petitioners submitted that he does not have a

copy of the letter dated 9th May, 2001 of Surat Municipal Corporation (referred to in the aforesaid letter). He submitted that the said letter is addressed by the respondent-Corporation, therefore, Corporation can produce the same. He submitted that the letter dated 23rd August, 2001 (Annexure-H) pertains to the amendments made in approval (sanction) of the Town Planning Scheme Surat, No. 14 (Rander-Adajan) Preliminary. He submitted that, therefore, a presumption be drawn to the effect that, "Surat Municipal Corporation had taken certain objections by its letter dated 9th May, 2001 against the modifications made by the Government in the aforesaid Preliminary Scheme No.14 of Surat, but those objections are turned down by the aforesaid letter." In absence of a copy of the letter dated 9th May, 2001, this contention cannot be accepted. He submitted that paragraphs 2.11, 2.16 and ground (C) of the petition are material in this regard. The same are as under :

"2.11 The Respondent-Corporation vide letter dtd. 09.05.2001, registered their objections, before the State Government, in connection with the modified preliminary scheme No. 14 (Rander-Adajan), as resolved by them vide resolution dated 23.2.2001. It appears that the aforesaid objections were registered against the various modifications made by the State Government while sanctioning the preliminary scheme that includes the land of the petitioners."

"2.16 The petitioners respectfully submit that, the State Government vide letter dtd. 23.8.2001, directed the Respondent Corporation, to implement and act as per the preliminary scheme so sanctioned by the State Government, in response to the objections raised by the Respondent-Corporation vide letter dtd. 09.05.2001. It is submitted that, therefore, the Respondent-Corporation ought to have implemented the town planning scheme sanctioned by the State Government by granting development permission for the land bearing F.P. No. 123, 1234, 125 & 127. Annexed hereto and marked, as ANNEXURE-"H" is a copy of the letter dtd. 23.8.2001."

"C) The petitioners respectfully submit that, the objections registered by the Respondent-Corporation before the State Government vide letter dtd. 09.05.2001, are

rejected by the Government vide order dtd. 23.08.2001. It is submitted that, the State Government, in reference to the letter dtd. 09.05.2001, directed the Respondent Corporation to follow and implement the preliminary scheme as sanctioned by the State Government and therefore, the same amounts to rejection of the objections registered by the Respondent-Corporation. Even otherwise, the State Government cannot vary the preliminary scheme on it sown without following due procedure prescribed under the Act. Therefore, the action of the Respondent-Corporation is arbitrary, illegal, null & void and requires to be quashed and set aside by this Hon'ble High Court."

Though letter dated 9/5/2001 is referred to in paragraph 2.11, 2.16 and ground `C', in absence of the copy of the letter dated 9th May, 2001, it is not possible to appreciate the contents of the same. The letter dated 23.8.2001 says that implementation of the sanctioned scheme be started and the same should be intimated immediately.

6. The learned Counsel appearing for the petitioners submitted that there was a draft scheme and in that draft scheme, the land in question was shown under reservation. It was at the stage of sanctioning of the preliminary scheme that the petitioner filed his objections before the State Government, which were accepted and necessary modifications in the preliminary scheme were granted. He submitted that once the scheme is sanctioned, it becomes a part of the Act itself and once it is a part of the Act, the same cannot be challenged on any ground except the grounds laid down by this Court by a judgement. The learned Counsel submitted that there is a judgement of a Division Bench of this Court, wherein, it is held that, `once the scheme is sanctioned, it becomes part of the Act, the same is immune from challenge'. But, subsequently the learned single Judge of this Court has held that on the grounds mentioned in the judgement delivered by him, a scheme can be challenged by a person affected by the scheme. He submitted that in the present case, the Corporation has not so far challenged the scheme. Therefore, the action of the respondent-Corporation of refusing development permission to the petitioners is not only unjust, but, also arbitrary and be quashed and set aside by a writ of mandamus. The Corporation be directed not to refuse the development permission on the ground mentioned in Clause

20. He reiterated that if at all it is open for the Corporation, it may withhold or refuse development permission on any other ground available to it under law. The petitioners also be directed to comply with the remaining clauses of the impugned order.

7. The learned Counsel for the petitioners relied upon a judgement of this Court in the matter between Ramubhai D. Rathod vs. Surat Municipal Corporation, reported in 2000 (3) GLR 2679. He contended that under the provisions of Section 65 of the Act, the Government has power to sanction or refuse to sanction the scheme. He relied upon the observations made in paragraph 13.3 of the aforesaid judgement, which reads as under :

"... Section 65(3) provides that on and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act. ...."

He also pointed out paragraph 27 of the judgement wherein the Court has observed as under :

"..... In my view, these objections were required to be raised before finalisation of Town Planning Scheme, therefore to obviate this difficulty. Section 53 of the Old Act, inter alia, provided that on the day on which the Final Town Planning Scheme comes into force all the rights in the original plot, which has been reconstituted, are determined and the reconstituted plot has become subject to the right stated by the Town Planning Officer. ..."

8. The learned Counsel appearing for the petitioners relied upon a judgement of the Division Bench of this Court in the matter between Kashiben, Wd/o. Pitamber Devchand & Anr. Vs. State of Gujarat & Anr., reported in 1989 (2) GLR 1176. He relied upon paragraph 5 of the judgement. The relevant part of paragraph-5 relied upon by the learned Counsel reads as under :

"5. * * * * * *

****** Section 67 of the new Act also states as follows :

"67. On the day on which the preliminary scheme comes into force :

(a) all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances;

(b) all rights in the original plots which have been re-constituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer."

Thus, it is clear that, not only the lands included in the preliminary scheme vest absolutely in the appropriate authority, but the preliminary scheme shall have the effect as if it were enacted in this Act. In the decision in the case of Dungarlal v. State reported in XVII GLR 1152, a Full Bench of our High Court has held :

"So far as the validity of such legislative measure is concerned, the validity can be gone into even in writ jurisdiction only to the limited extent whether there is any transgression of jurisdiction of the authorities concerned and whether the scheme as finally emerged is totally inconsistent with the Act. It is only the fundamental breaches, that is where minimum statutory essentials are not complied with, which result in a total lack of jurisdiction and not other procedural errors or defects that would render a scheme, which had become a legislative measure and a part of the Act, liable to attack or challenge in a Court on the ground that it is null and void."

Proceeding further, the Full Bench held :

"xxx it was open to a person affected to waive individual special notice specified in sub-rule (3), which was only as an additional safeguard for the individual concerned. Therefore, that could never constitute the minimum essential of the scheme or such a basic requirement that its non-compliance would have any nullifying consequence."

The Full Bench further held :

"The provisions of Rule 21(1) lay down the minimum essentials for protecting public interest after the Town Planning Officer commences his

work. That sub-rule is introduced in accordance with the principles of `audi alteram partem', Special individual notices under old sub-rule (3) cannot, therefore, be regarded as an essential minimum safeguard as in the case of sub-rule (1) so as to have the consequence of nullifying the final scheme."

Finally, the Full Bench held :

"Sec. 51(3) which gives effect to the final scheme as if enacted in the Act made it an Act of the Legislature so as to make it immune from the challenge on the ground of procedural defects, which did not amount to exceeding the limit of jurisdiction under the Act to frame a Town Planning Scheme under the Act, but, were only in the nature of the breach of the additional procedural safeguards, and which were not in the nature of essential minimum requirements, will not render the scheme null and void so as to entitle the party to challenge it under Art. 226 or in any Court after it becomes a part of the Act under Sec. 51(3)."

This decision, in our opinion, clearly satisfies the position to the effect that the settled preliminary scheme cannot be a subject mater of a writ proceeding unless otherwise it comes within the parameter mentioned in this Full Bench decision. The short facts of the present case, which we have discussed above, clearly establish that the scheme is not inconsistent with the Act nor any fundamental breaches have been committed by the authority in sanctioning the schemes, nor any limited statutory essentials have been violated which will result in a total lack of jurisdiction."

He submitted that thus, it is clear from the aforesaid judgement of the Division Bench that the action of the Surat Municipal Corporation is not in accordance with law. Not only that, it is contrary to the provisions of law being absolutely arbitrary and, therefore, requires to be quashed and set aside by this Court.

9. The learned Counsel appearing for the petitioners also relied upon a judgement of the Division Bench of this Court in the matter between Naranbhai Lallubhai Patel vs. B.S. Oza and Ors., reported in 1988(1) GLR

646. He submitted that under Section 65 of the Act, a Town Planning Officer is required to forward the scheme prepared by him to the State Government along with objections received by him and the State Government is duty bound to consider those objections. He submitted that it is open for the State Government to invite objections of its own so as to enable the individuals, who are affected by the preliminary scheme, to have an ample opportunity to present their case before the scheme becomes final. He submitted that in the present case, when the draft scheme was submitted to the Government, the petitioners filed their objections and the Government, having found substance, accepted them and accordingly, modified the scheme. The learned Counsel submitted that even at the cost of repetition, he would submit that once the scheme is sanctioned, it becomes a part of the Act and the scope of challenging such scheme is nil. If at all, such scheme is to be challenged, it can be only on specific grounds, which are laid down by this Court in a judgement, which he is to refer later.

10. The learned Counsel for the petitioners relied upon the observations made by this Court in paragraph 2 of the judgement in the case of Naranbhai Lallubhai Patel (Supra), which reads as under :

"2. In this Special Civil Application, petitioner wants to quash and set aside the Town Planning Scheme No.2 prepared by respondent No.1 for the town of Unjha. Various grievances are made, including mala fides, on the part of the authority in preparing such a preliminary scheme. Section 64 of the Act deals with submission of preliminary scheme to the Government. Section 65 of the Act deals with the power of the Government to sanction or refuse to sanction the scheme. As per Sec. 65(1)(a), the Government, in respect of the preliminary scheme, will take action within a period of two months from the date of its receipt either for sanctioning the same or refusing to sanction or for making such modifications, as in its opinion, necessary. Section 65(2) visualises notification sanctioning the preliminary scheme or the final scheme. Such a notification has to be there for a period of one month and in certain cases it may be extended for a further period not exceeding three months at a time. Section 65(3) makes it clear that on and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act."

According to him, in view of these observations, what is required to be done is to direct the respondent-Corporation not to refuse the development permission to the petitioners on the ground/s mentioned in clause 20 of the impugned order.

11. The learned Counsel for the petitioners submitted that under Section 122 of the Act, the State Government has to exercise control over the `appropriate authority'. He reiterated that it is obligatory on the part of the `appropriate authority' to carry out the directions/instructions issued by the State Government from time to time for effective implementation. He submitted that in the present case, the State Government by its letter dated 23rd of August, 2001 asked respondent-Surat Municipal Corporation to implement the scheme and intimate the same to the Government immediately. Thus, it is a clear case of blatant violation of the instructions issued by the Government to the respondent-Corporation which is an appropriate authority under the Act. He submitted that this is an additional ground on which a writ of mandamus is required to be issued directing the Corporation not to refuse the development permission on the ground incorporated in Clause 20 of the impugned order.

12. The learned Counsel for the petitioners submitted that Section 117 of the Act provides for, `the effect of other laws', and it starts with non obstante clause, hence, when permission for development in respect of any land is obtained under the Act, such development is deemed to be lawfully undertaken or carried out. Only because the permission, approval or sanction required under any other law for such development is not obtained, will not give rise to presumption that the same is unlawful. He submitted that in view of the provisions of Section 117 of the Act, it is not open to the Surat Municipal Corporation to refuse the development permission to the petitioners.

13. The learned Counsel appearing for the petitioners relied upon the judgement of this Court in the matter between Shilpa Park Co-operative Housing Society Ltd. Vs. Surat Urban Development Authority and Ors., reported in 1996(2) GLH 287. He submitted that in this case, the Court had examined, `the scope of judicial review of scheme framed and sanctioned under Section 65 (3) of the Act'. He submitted that in paragraph 9 of the judgement, this aspect is discussed. The relevant portion of paragraph-9 reads as under :

9. * * * * * *

The question raised before the Full Bench in Dungarlal's case (supra) was whether before finalisation of the Town Planning Scheme under the Bombay Town Planning Act, 1954, the Town Planning Officer was required to be issued special notice under sub-rule (3) of Rule 21 of the Bombay Town Planning Rules, 1955 to the person who claims to be tenant of whole or some portion of the land. Before the Full Bench two questions were raised - firstly, whether special notice to individual under Rule 21(3)(4) of the Act of 1976 of at least 3 days duration is mandatory; and secondly whether the finally sanctioned scheme, in view of the provisions of Section 65(3) is immune from challenge being a legislative Act. So far as the first question is concerned, a Division Bench of this Court in the case of Kaushikprasad Chandulal Mahadevia v. Ahmedabad Municipal Corporation, reported in 11 GLR 993, took the view that Rule 12 is a salutary rule intended to safeguard the property rights of citizens who are affected by making of the Town Planning Scheme. Again in the case of Mohanlal Jesinghbhai v. P.J. Patel reported in 11 GLR 1035, the Court held that behind Rule 21 clause (4) clearly is that all must have an opportunity of stating their views in making their representation before a decision is taken by the Town Planning Officer affecting them. The Court further held that a tenant of the land to be acquired is a person affected within the meaning of Clause (4) of Rule 21. Both the aforesaid decision were referred in Dungarlal's case (supra) for reconsideration to the Full Bench. The full bench, after examining the various provisions of the Bombay Town Planning Act, 1959 and the Rules, held that the two decisions referred in 11 GLR at pages 993 and 1035 were wrongly decided only to the extent that a right to individual notice under Rule 21(3) and 21 (4) is held to be so mandatory as to have a nullifying consequence. The Court held that sub-rules (3) and (4) are merely additional procedural safeguards and not the essential minimum requirements. So far as the second question is concerned, the Full Bench held that the validity of legislative measure can be gone into even in writ jurisdiction only to the

limited extent, i.e.

1. Whether there is any transgression of jurisdiction of authorities concerned.

2. Whether the scheme is finally emerged is totally inconsistent with the Act and;

3. Whether the minimum statutory essentials are not complied with and as such there is fundamental breach resulting into total lack of jurisdiction.

4. It was also held that the other procedural errors or defects that would render a scheme which has become legislative measure and part of the Act liable to attack or challenge in a Court on the ground that it is null and void.

This view was endorsed by another Full Bench in the case of Saiyad Mohammed v. Ahmedabad Municipal Corporation & Ors. reported in 18, GLR 549. The Supreme Court in Jaswantsingh's case (supra) has over-ruled the judgement of the Full Bench of this Court in Dungarlal's case (supra) only to the extent of first part of its judgement, i.e. with respect to non compliance with the requirement of sub-rules (3) and (4) of Rule 21. In Dungarlal's case, Kaushikprasad's case and in Mohanlal's case, the decision rendered by the earlier two Division Benches were held to be wrongly decided. The Supreme Court reversed the said view and held that both the said judgements laid down the law correctly. It would be convenient to read para 15 of the judgement of the Supreme Court as reported in 1992 (Supple.) (1) SCC 5 as under :

"Accordingly, we are of the considered view that the judgements in Kaushikprasaad Chandulal Mahadevia v. Ahmedabad Municipal Corporation and Mohanlal Jesingbhai v. P.J. Patel, Town Development Officer, Ahmedabad Municipal Corporation laid down the law correctly. The finding of the Full Bench in the first part of its judgement to the effect that non compliance with the requirements of sub-rules (3) and (4) of Rule 21 does not vitiate the scheme is not sound in law."

Thus, it is clear that the Supreme Court has

reserved the judgement in Dungarlal's case only on the first question. Thus, the law laid down in Dungarlal's case on the second question is a good law being approved by the Apex Court.

14. The learned Counsel for the petitioners submitted that the Act binds the Government as much as it binds others. He cited a judgement of the Apex Court in the matter between Nookala Setharamaiah vs. Kotaiah Naidu & Ors., reported in AIR 1970 SC 1354, wherein in paragraph 23, the Apex Court has observed as under :

"23. The High Court was also wrong in opining that in view of the representations made by the learned Government Pleader before Bhimasankaran, J., on August 25, 1959, in Writ Petition No. 1237 of 1957, the State Government is estopped from contending that the application made by the 1st respondent on September 15, 1953, must be deemed to have been refused. There can be no estoppel against a statute. Rule 28 (1-A) and Rule 57(2) are statutory rules. They bind the Government as much as they bind others. The requirement of those rules cannot be waived by the State Governments. Therefore, the fact that the learned Government Pleader represented to the Court that the petition filed by the 1st respondent on September 15, 1953 was still pending disposal cannot change the legal position nor could it confer on the State Government any power to act in contravention of those rules."

He submitted that it is not open for the authority under the law to plead that the law is mala fide.

15. Mr.P.G.Desai, learned Advocate appearing for the respondent-Surat Municipal Corporation, submitted that the Town Planning Committee of Surat Municipal Corporation has decided to challenge the Scheme by passing a Resolution dated 28/11/2001. He pointed out paragraph 8 of the Affidavit in reply filed by one Shri Prahalad S. Raval, serving as Junior Engineer with the respondent-Corporation, which reads as under :

"I submit that the State Government has sanctioned the preliminary Scheme on 17.11.2000 wherein the reservation has not been shown and, therefore, the Town Planning Committee of the Corporation by its Resolution No. 8 of 2001 dated 23.2.2001 resolved to file objection before

the State Government and also decided to request the State Government to reconsider the said Town Planning Scheme."

16. The learned Advocate for the respondent, Corporation, submitted that he has received a letter dated 3rd December, 2001, wherein it is stated that the Corporation has approached the High Power Committee constituted as per the Government Resolution of the Urban Development and Urban Housing Department dated 3rd October, 2000. He made available a copy of the said resolution. He submitted that the said resolution was passed in view of the observations made by this Court in Special Civil Application No. 4289 of 1996, 8246 of 1997, 6045 of 1997 and 3667 of 1997 to the effect that,

"in cases where on one hand it is the Government of Gujarat and on the other hand, there are public undertakings of the Government of Gujarat or constitutional authorities or corporation or public sector undertakings or statutory corporations, the Government should consider to appoint a `permanent committee' of the `Principal Secretary' and only after such Committee refuses, the legal matter should be taken before the Court or Tribunal by either party."

He submitted that by the aforesaid resolution, the Government constituted a High Power Committee consisting of Seniormost Additional Chief Secretary or Principal Secretary as Chairman and Additional Chief Secretary, Chief Secretary of Urban Development and Urban Housing Department as a member, Chief Secretary (Financial matters), Finance Department, as a member, Secretary of Legal Department as a member and Secretary (Housing) of Urban Development and Urban Housing Department, concerned Joint Secretary/Deputy Secretary of Urban Development and Urban Housing Department as Member Secretary and head of the concerned Department, Board, Municipal Corporation or authority as member. He submitted that it is made obligatory under the said Resolution to approach the High Power Committee in case when any legal matter arises between the Urban Development and Urban Housing Department on the one hand and any public undertaking, under its control, a Board, a Corporation, Statutory authority or constitutional authority on the other, amongst themselves or with the State Government. The matter shall be presented before the High Power Committee, which will enquire into the

matter and will work in the direction of finding a solution to the problem. Only after having obtained a certificate, as aforesaid, the concerned will be able to go to the concerned Court or Tribunal.

17. The learned Advocate for the respondent-Corporation submitted that in the present case, scheme of the Act is very clear and Section 40(1) provides that it is for `the appropriate authority' to make one or more Town Planning Scheme/s for the development of the area or any part thereof. He submitted that Section 41 provides for power of the appropriate authority to resolve a declaration of intention to make scheme, which, according to him, is the starting point of making a scheme. He further submitted that then comes the second stage, in the form of making a publication of Draft Scheme which is provided under Section 42 of the Scheme. Thereafter, comes the stage of objections to the Draft Scheme, which are required to be considered by the appropriate authority after the same are lodged by the concerned party. He submitted that it is thereafter that the power of the State Government to sanction the draft scheme comes into play which is provided under Section 48 of the Act.

18. The learned Advocate for the respondent-Corporation submitted that under Section 65, the Government is vested with power to sanction or refuse to sanction the scheme. It also provides for, `the effect of sanction'. He submitted that the power of the State Government to modify is `limited'. He submitted that in fact, power to sanction is given to the State Government only with a view to achieve the purpose mentioned in the Section itself. He submitted that Clause (b) of Sub. Section 1 of Section 65 provides that,

> "In the case of Final Scheme, within a period of three months from the date of receipt, by notification, sanction the preliminary scheme or the final scheme or refuse to give sanction, provided that not sanctioning any such scheme, the State Government may make such modification as may, in its opinion, to be necessary for the purpose of correcting an error, irregularity or informality."

19. The learned Advocate for the

respondent-Corporation submitted that as is stated in paragraph 5 of the affidavit in reply, the Surat Municipal Corporation had declared its intention to make the Town Planning Scheme No. 14 on 14/10/1988. Pursuant to the said intention, the Corporation had called public meeting on 4/4/1989. Thereafter, the Town Planning Scheme was prepared by the Corporation and in the said Town Planning Scheme, the Corporation had put the land admeasuring about 11000 sq. mtrs. under reservation for District Centre. It is also submitted that the Corporation had invited objection and the Draft Town Planning Scheme was published in the Government Gazette on 18/09/1989. He submitted that at the relevant time, the petitioner had not lodged any objection against the said Draft Town Planning Scheme. He submitted that thereafter, the said Draft Town Planning Scheme was sent to the State Government for its approval and the State Government had approved the said Draft Town Planning Scheme wherein the land in question was shown under reservation. The State Government sanctioned the Draft Town Planning Scheme on 04/09/1991. Thereafter, the State Government appointed the Town Planning Officer and the said Officer prepared the preliminary scheme and sent the same to the State Government in which also, the land in question was continued under reservation for the purpose of District Centre, as proposed by the Surat Municipal Corporation, who is `the appropriate authority' and who had kept the aforesaid land under reservation as it was felt necessary by the appropriate authority. He submitted that it was the State Government, who without giving any opportunity to the Corporation (the appropriate authority) and without inviting any objection from the appropriate authority-the Corporation, dereserved the land in question, which is illegal, also arbitrary and contrary to the public interest. He submitted that in fact, when the reservation for the land in question was proposed by the Corporation (appropriate authority) for the purpose of District Centre, as felt necessary by the Corporation, it was obligatory on the part of the State Government to hear the Corporation before dereserving. As the Corporation has already lodged its objections before the State Government, the Corporation has not sanctioned the plan of the petitioners on this ground, amongst other grounds, as is mentioned in the impugned order. He submitted that dereservation cannot be said to be, "for the purpose of correcting an `error', `irregularity' or `informality'. The land admeasuring 11000 sq. mtrs. was placed under reservation for district centre, against which the petitioners had not filed any objection. The Draft Town Planning Scheme was

sent to the State Government and the same was sanctioned by the State Government on 4/9/1991. Thereafter, a Town Planning Officer was appointed to prepare the preliminary Town Planning Scheme. That preliminary Town Planning Scheme was sent, wherein the reservation of the land in question for District Centre was duly mentioned and it was only at the stage of sanctioning of the preliminary Scheme, on 17/11/2000, said reservation is revoked against which the Town Planning Committee of the Corporation, by its Resolution No. 8 of 2001 dated 23rd February, 2001, has resolved to file objections before the State Government and has also decided to request the State Government to reconsider the said Town Planning Scheme and has also approached the high power committee. In light of these facts, if the plans of the petitioners are not sanctioned by mentioning one of the ground that the Surat Municipal Corporation has filed its objections before the State Government, the same cannot be said to be so unreasonable that it will warrant interference under Article 226 of the Constitution of India.

20. From the aforesaid discussion, it is clear that the Surat Municipal Corporation has decided to challenge the scheme by passing a Resolution dated 28/11/2001. In such circumstances, it will be in the fitness of things if the Corporation is granted some time to challenge the action of the Government and to obtain appropriate orders from the Court, failing which the Corporation shall decide the application of the petitioners in accordance with law. The Corporation is granted one month's time to challenge the action of the Government from the date of the receipt of writ of this order. It goes without saying that on expiry of the aforesaid period, it will not be open to the Corporation to deny the development permission on the ground mentioned in Clause 20 of the order. The Corporation will then decide the representation of the petitioners in accordance with law. It is further clarified that the Corporation may withhold the development permission on any other ground, if available to it, under the law, but not on the ground mentioned in Clause-20 of the order. This order be not interpreted as a direction to the effect that the Corporation is bound to give development permission even if the petitioners have not fulfilled all other requirements which they are otherwise under an obligation.

In the result, with the aforesaid observations, both these petitions are disposed of. Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

kamlesh*